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The Impact of Court Decisions on Union Growth - 1945-1948

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THE IMPACT OF COURT DECISIONS ON UNION GROWTH - 1945 - 1948

by

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LIFE

Aloysius Joseph Memmel was born in St. Louis, Missouri, December 14, 1928.

He was graduated from St. Louis University High School, St. Louis, Missouri, June, 1946, and from St. Louis University, June, 1958, with the degree of Bachelor of Science in Commerce.

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CHAPTER I

INTRODUCTION

A. Purpose And Objective Of The Thesis

The subject matter of this research is "the court and unions" in the period of 1945-1948. This thesis is a part of a project being conducted by the Institute of Social and Industrial Relations on union growth. In the frame work of this project, the impact of certain political and social factors on union growth are going to be examined.

The purpose of this thesis is to analyse the effects of court decisions upon union growth in the period of 1945-1948. The selection of the years of 1945 to 1948 is in keeping with the method of the Institute's project on union growth, i.e: examining the possible effects of a growth factor in a period which preceded a change in the development of unions. 1948 was a year of such change, representing a temporary downturn in union membership. It is hoped that this thesis can indicate if court decisions influenced these changes in union growth.

Court decisions are examined because in the view of labor economist and leading labor law experts, the decision of various courts have had a role in effecting union growth. According to

Joseph Shister, one of the patterns effecting union growth in the United States has been the sociolegal framework.[1] Under the sociolegal framework the following factors are enumerated: (a) public opinion; (b) legislation; and (c) the courts.[2]

Commenting on union organization in general and the courts' influence in particular, John T. Dunlop, noted that: "Certain types of community institutions stimulate and others retard, the emergence and growth of labor organization, as would have been the case had the doctrine of early conspiracy cases been generally applied."[3] Other labor law authorities agreed with Dunlop that the courts also effected the fate of organized labor.[4] Archibald Cox, in his article on "The Role of Law in Labor Disputes," concluded that for half a century the national labor policy was formulated by the judiciary.[5]

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[1]Joseph Shister, "The Logic of Union Growth," The Journal of Political Economy, LXI October, 1953, p. 424.

[2]Ibid.

[3]John T. Dunlop, "The Development of Labor Organization," Insight Into Labor Issues, (New York, 1946), p. 184.

[4]Nathan P. Feinsinger and Edwin E. White, "Labor Legislation and the Role of Government," Monthly Labor Review, July, 1950, p. 51.

[5]Archibald Cox, "The Role of Law in Labor Disputes," Cornell Law Quarterly, Vol. 39, Summer, 1954, p. 593.

B. Methods Used in This Research

The historical background covering the period of 1945-1948 was compiled from labor history monographs and journals. An examination of the historical background will develop those factors which from a historical point of view had an effect on union growth. This research is based entirely on library work.

The opinions of the Supreme Court for the period of 1945-1948, as cited in the United States Reporters concerning labor, were selected. However, those cases which concern violations of the Fair Labor Standards Act were not included in this thesis, since they were not considered to have a direct effect on union growth.

The selection of cases from Federal Courts (other than the Supreme Court) and State Courts presented a difficult problem because of the large number of opinions cited during the period under examination. In order to confine the number of cases to be examined, they were classified under the following topic headings: organization, strikes, boycotts and picketing, the individual and the Union, and disputes between local and international unions.

Each topic was checked against the Commerce Clearing House Labor Cases for each year under study and citations concerning each topic noted. Before consulting the reporters for each case the Shepard's Citations were consulted for additional cases. The cases cited were then briefed from Federal Reporter and the Federal Supplement for Federal cases and the Atlantic, North Eastern,

North Western, Pacific South Eastern, South Western and Southern Reporters for State cases. They were briefed and arranged in topic order.

The final problem was to analyse the decisions to see if they had any effect on union membership. As an aid in this analysis, the Harvard Law Review, California Law Review, Labor Law Review, and monographs on Labor Law were consulted. The journals and monographs indicated that these cases had been reported as leading decisions and could by comparing their decisions effect union growth. The remaining chapters will attempt to analyse and prove the validity of their effect on union growth.

CHAPTER II

TRADE UNIONS DURING 1945 - 1948

A. Union Membership

During the Second World War, trade unions had a very favorable climate for growth. Despite the fears of the labor movement, this growth continued during the reconversion period. By 1948, 14 million persons were members of trade unions.[1] The following table will illustrate the actual changes in union membership for the period under study.

TABLE I

UNION MEMBERSHIP 1945 - 1948

YEAR	ACTUAL MEMBERSHIP	INCREASE OVER PRECEDING YEAR	%
1945	12,724,700	185,800	1.5
1946	12,980,800	256,100	2.0
1947	14,119,100	1,138,300	9.0
1948	14,186,400	67,300	.5

Source: Irving Bernstein, "The Growth of American Unions," American Economic Review, June, 1954, p. 303.

[1]Canadian figures are not included.

The table indicates that for the first two years of this period, membership increased 185,800 and 256,100 respectively. In 1947, there was a very sharp increase of 1,138,300, followed by a very modest increase of 67,300 in 1948.

While the numerical increase in trade union membership indicates an upward trend, an examination of real membership will reflect a different pattern. The following table indicates the actual changes in real membership.

TABLE II

REAL MEMBERSHIP 1944 - 1948

YEAR	ACTUAL MEMBERSHIP	CIVILIAN LABOR FORCE	UNION MEMBERSHIP AS PER CENT OF CIVILIAN LABOR FORCE
1944[2]	12,538,900	54,630,000	22.7
1945	13,379,000	53,860,000	24.8
1946	13,648,000	57,520,000	23.7
1947	14,845,000	60,168,000	24.7
1948	14,916,000	61,442,000	24.3
1949	14,960,000	62,105,000	24.1

Source: Irving Bernstein, "The Growth of American Unions, 1945-1960, Labor History, Spring, 1961, p. 135.

The preceding table indicates that the percentage of union membership to civilian labor force has varied only by one per cent during this period.

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[2]Annon. Employment and Earnings, United States Department of Labor, Bureau of Labor Statistics, Vol. 10, No. 5, November, 1963, p. 1.

B. Factors Effecting Union Growth In 1945-1948

Before we examine in detail the factors effecting union growth during this period, some aspects in general should be considered. In his study entitled "Union Growth-Reconsidered," Julius Rezler classified factors which have a primary or secondary effect on union growth.[3] These factors can be legal, political or social and can effect the growth of union in a certain period of time. In Rezler's study, certain years were selected and examined because of changes in union membership. The following factors were shown to have adverse, neutral or favorable effects on union growth.[4]

(a) Government
(b) Legislation
(c) Courts
(d) Employers
(e) Business Cycle
(f) Public Opinion
(g) Union Leadership
(h) Structure of Union Organization

Not all the factors indicated, effected union growth at the same time. A combination of certain factors limited or promoted growth. In some instances, they offset each other and thus allowed only one or two factors to influence it. While concerned with the Courts as a factor, we shall in this chapter explore the roles of the other factors and their effects on union growth.

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[3]Julius Rezler, Union Growth-Reconsidered, Chicago, 1958.

[4]Ibid., Rezler, Table II and III.

The Second World War had ended a year earlier than the Truman Administration had anticipated. The war effort had reached its peak in 1944, when forty-five per cent of the labor force had been employed in war production or in the armed forces. With the cessation of hostilities, both labor and management urged a program be adopted by the government which would return the economy to a peacetime status.

Labor, fearful of increased unemployment due to the end of government contracts, advanced a program of full employment. On the matter of removal of price controls, there was considerable difference in opinion between the American Federation of Labor and the Congress of Industrial Organizations. The A.F.L. advocated immediate removal of all controls, while the C.I.O. cautioned for a gradual reduction of them.

The ending of hostilities did not cause a decline in production and employment, since there was a demand for consumer goods, which had been rationed or non-existent during the war. This demand coupled with accumulated savings of consumers created a business climate conducive to an expanding economy.

The business prosperity which followed the war, along with a high level of employment provided an atmosphere for continued trade-union growth. While this growth was not as spectacular as during the war period, it was upward.

Labor unions continued to maintain their wartime membership levels and gained a little. Some of this increase in membership resulted from organizational campaigns in previous unorganized areas.

The textile industry, which had its beginning in New England, started a migration south. The south presented an area where union organizational activity had always faced local opposition. With this shift in the textile industry, both the A.F.L. and the C.I.O. began an all out campaign to organize the southern industrial complex. While faced with a well disciplined opposition, some progress was made in this area.

A more receptive area was the white collar field. The Retail Clerks' Protective Association, American Federation of Labor, had made some early progress in this area and had organized about ten per cent of the retail and wholesale white collar workers. The greatest gain in white collar workers occurred in the telephone industry. In 1945, between 100,000 and 200,000 members of the National Federation of Telephone Workers left their jobs for four to six hours in protest over a National Labor Relations Board ruling.[5] This demonstration indicated that trade-union movement had become an important factor in the telephone industry. This growth continued through the 1945 - 1948 period.

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[5]Joel Seidman, American Labor From Defense To Reconversion, Chicago, 1953, p. 248.

The preceding discussion indicated that certain factors had a favorable effect on union growth. The business cycle responding to the demand for consumer goods because of shortages during the war, created a climate for employment. Aggressive union leadership and the inclusion of union security provisions in collective agreements promoted increased membership. The Truman Administration created a friendly climate toward labor.

The following discussion will try to show that legislation, public opinion and employers created an unfavorable attitude toward union growth.

It can be reasoned that this period demonstrates the fact that at a given time factors can have opposite effects.

Trade-unions also underwent changes in industries which either grew or declined due to a shift in demands for their products or services. Petroleum and natural gas production grew while bituminous coal declined. Trucking and airlines grew as railroads suffered. There were shifts in the composition of the labor force itself as the number of blue collar workers declined while those in white collar and service industry grew.

The end of the war brought to labor-management relations a climate of tough collective bargaining. Labor leaders wanted no more dealings with the War Labor Board, which had incurred labor's wrath through the promulgation of the Little Steel Formula. When this Board was succeeded by the National Wage Stabilization Board

in 1945, it also was criticized by labor for its disapproval of union advocated wage increases. Labor was in no mood for a no-strike pledge since it felt the rank and file workers demanded a program to keep pace with the rise in living costs, the decline in overtime and loss of jobs through cancellation of government contracts.

In the fall of 1945, the issue of wages reached a climax when the labor movement advocated a general wage increase of thirty-one per cent and contended that this could be granted without affecting prices. A short time later, the Office of Price Administration issued a report supporting a twenty-four per cent wage increase.[6] Within a few days, President Truman called for a program of wage increases which would help workers sustain their purchasing power. He maintained that these increases would yield higher productivity and profits.[7]

With the wage problems still in a discussion phase, the issue became the crux of numerous strikes. Although the number of strikes did not increase sharply, their length and man-days idle per month intensified and adversely affected public opinion. Strikes rose from 4,750 in 1945 to 4,985 in 1946. The man-days

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[6] Seidman, p. 219.

[7] Ibid., p. 220.

idle increased from 38,000,000 to 116,000,000 in the same period.[8] The main purpose of these strikes was the maintenance of purchasing power for the strikers. This loss of purchasing power had resulted from the increase in the prices of consumer goods and the end of most of the wartime price control programs.

President Truman made one final effort to bring labor and management together when he held a National Labor-Management Conference in November of 1945. The main purpose, according to the President, was to establish the machinery to prevent or to settle industrial disputes. On the second day of the conference, the issue of a transit strike was presented in hope that the conferees might arrive at a solution. The conference broke up without any solution to the transit strike or to the establishment of machinery to settle industrial disputes.

Of the numerous strikes that occurred in this period, that of General Motors perhaps best illustrated the conflicts of the era. Walter Reuther, head of the United Auto Workers, had requested that General Motors grant a thirty per cent wage increase in order for their employees to maintain adequate purchasing power. General Motors countered with a ten per cent wage increase, contending that this was the maximum they could pay. Reuther requested that

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[8]Annon., Monthly Labor Review, June 1962, Vol. 19, No. 7, p. 854.

General Motors open their books and prove their inability to pay more. President Truman appointed a fact-finding board, but General Motors withdrew from the hearing when the President stated that: "Ability to pay was a relevant issue."[9] After 113 days, the strike was settled with an .185 per hour average increase.

Other strikes arose in the oil industry with 40,000 workers idle and in the meat packing industry with 300,000 idle. Three other significant strikes were those at General Electric, Westinghouse and United States Steel. These strikes somewhat followed the pattern of that of General Motors with bitter arguments over whether the wage increases were inflationary. These disputes were settled with wage increases of .15 to .185 per hour.

Three major strikes--one in railroad and two in coal, caused serious repercussions for labor. In the spring of 1946, John L. Lewis, the president of United Mine Workers, requested that the mine operators establish a health and welfare fund to be financed from coal royalties. While the mine operators were willing to grant wage increases, they balked at the request for the welfare fund. Their rejection was based on the theory that the fund was not the proper subject of collective bargaining. On April 1, 1946, the mines were struck. However, President Truman negotiated

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[9]Foster R. Dulles, Labor in America, New York, 1955, p. 359.

a two-week truce. Before the truce had expired, he placed the mines under the Secretary of the Interior, Julius A. Krug.

Krug and Lewis reached an agreement to establish two separate funds to be financed by the royalties and to be jointly administered by the mine operators and the union. The union claimed it to be the greatest economic and social gain registered by the United Mine Workers in a single wage agreement.[10]

While the coal strike occupied the attention of the nation, the railway industry was moving towards a national strike. After a breakdown in negotiations, the twenty different brotherhoods agreed with management to submit the matter to the Railway Labor Board. Only the nearly 300,000 engineers and trainmen refused to accept the agreement and called for a general strike on May 18, 1946.[11] President Truman, acting on executive powers granted during war time, seized the railroads and postponed the strike for five days.

On May 23, 1946, the railroads were completely shut down. President Truman, in a radio address, appealed to the workers to return to work in the interest of the national welfare. Faced with increasing request for government action and the hostility of the workers, a bitter and disgusted President turned to Congress

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[10]Dulles, p. 361.

[11]Raybeck, p. 391.

for legislation. Minutes after the strike was started, Truman, in an address to a joint session of Congress, requested legislation to draft workers who engaged in a strike considered to be injurious to the national welfare.

Congress reacted swiftly and the House of Representatives enacted a bill containing a provision to draft strikers, but the Senate adopted a bill without the draft provision. Therefore, the bill was allowed to die in committee.

In November of 1946, the nation was confronted with its second major strike in the coal fields. The mines were still under the control of the Federal government. Secretary Krug refused to consider reopening of the contract for wage discussions. Lewis called the mine workers out with the slogan: "No contract--no work."[12] The government requested and received an injunction from a Federal District Court to restrain the workers from striking. Despite the injunction, the mines were shut down on November 20, 1946. On December 3, 1946, Federal Judge T. Alan Goldsbrough fined the Mine Workers $3,500,000 and Lewis personally $10,000.[13] The union appealed the decision to the United States Supreme Court on the question of a violation of the Clayton and Norris-LaGuardia Acts. The Supreme Court upheld the lower court and the strike

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[12] Dulles, p. 370.

[13] Ibid.

ended on March 19, 1947.

During the coal controversy, the second round of wage increases began. The .15 and .185 cent per hour increases gained in the strikes of 1945, were nullified by a prolonged inflation. The continuing advocation of increased wages by labor had a direct effect on public opinion. Throughout this period, the trade union movement had asserted that it was only seeking wage increases which would maintain purchasing power. However, some of the general public thought that labor was seeking the increases at the expense of the consumer.[14] Labor's failure to offset this adverse attitude contributed to the climate of anti-unionism.

In February of 1946, the National Association of Manufacturers, noting the somewhat hostile attitude of the general public and the business community towards labor, intensified its anti-union efforts. Through a series of newspaper ads, it urged the establishment of a national labor policy that would treat both labor and management exactly alike and above all be fair to the general public.[15] In December of the same year, the United States Chamber of Commerce called for legislation to curb the monopolistic

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[14] Ibid.

[15] Harry A. Millis and Emily Clark Brown, From the Wagner Act to Taft-Hartley, Chicago, 1950, p. 282.

practices of trade unions.[16] The immediate aim of this drive was for the education of the unorganized middle class and the young people to the need of legislation to restrict labor.

By 1947, more than thirty-five states had passed legislation which restricted labor to some degree.[17] Closed shop, check-off and maintenance of membership were restricted by state laws. The closed shop legislation was the subject of state-wide referendum and constitutional amendments. The first right-to-work laws were adopted by Louisiana, Arkansas and Florida in 1944. In 1946 and 1947, ten states legislated against the closed shop.[18]

While the provisions of union contracts which promoted union security through closed shop agreements were being forbidden by state law, restrictive legislation was also enacted in several states governing the check-off and work permits. Picketing, secondary boycotts and strike activities were controlled in fourteen states.[19] The rise in state right-to-work laws and restrictive legislation coincided with the clamor for such legislation on a national level.

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[16] Ibid.

[17] Anon. Growth of Labor Law in the United States, U.S. Department of Labor, 1962, p. 248.

[18] Ibid.

[19] Growth of Labor Law, p. 248.

In an analysis of the arguments for changes in labor laws since 1939, Millis and Brown cited the following reasons.[20]

> (1) Under existing laws organized labor had come into a dominant position in industry; it had too much power and there was a need to effect a balance;
>
> (2) Many of the unions had not developed a necessary sense of responsibility to industry and the public, or to individual employers and union members, correlative to their protective rights; and
>
> (3) Labor organizations should be under the same or equivalent limitations and responsibilities as rested upon employers.

The many bills introduced in Congress and state legislatures contained provisions incorporating many of the provisions enumerated above.

The Seventy-ninth Congress (1945-1946), reflecting the changing public attitude towards labor, had fifty bills presented to it. Of these bills, those of McMahon, Ellender, Smith, Bell-Hatch and Case were the most important. These bills contained provisions to prevent national strikes and to promote industrial peace. They called for the use of cooling-off periods, fact finding boards and compulsory arbitration. The Case bill was passed, but was vetoed by President Truman. Although these bills were never enacted into law, they did indicate the mood of the Congress.

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[20] Millis, p. 272.

At a time in history when trade-union movement in the United States needed a united front, it was torn apart by internal friction. Throughout the post-war boom, the A.F.L. and the C.I.O. had been engaged in raiding each other for membership. Agreements not to raid were few and broken easily. The National Labor Relations Board was required to hold elections in which unions tried to remove the incumbent. Secondary boycotts and strikes were tactics used by unions in an attempt to persuade union members to join their unions. This division in the house of Labor, despite numerous attempts to bring the A.F.L. and C.I.O. together, worked to labor's disadvantage.

Another internal problem was that of the left-wing. The United Electrical Workers, International Longshoremen's and Warehousemen's Union (of the Pacific Coast), the Fur and Leather Workers, the National Maritime Union, Mine, Mill and Smelter Workers, and the Farm Equipment Workers obeyed the party line. The United Auto Workers elected Walter Reuther as its president and this was a serious setback for the Communists.[21] Other setbacks followed. The National Maritime Union left the Communist group and in 1946, President Philip Murray, at the C.I.O. convention, proposed a resolution disavowing Communist control of the C.I.O.[22]

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[21] Henry Pelling, American Labor, Chicago, 1960, p. 193.
[22] Ibid.

In 1947-48, Murray acted to remove individual communists from influential posts inside the C.I.O. headquarters and exerted pressure to have them removed on the state and local level. While labor was housecleaning itself of the Communists, the Cold War intensified and the general public called on labor to rid itself of left-wing associations.

The first restrictive act of the 1945 - 1948 period was the Lea Act, commonly known as the Anti-Petrillo Act. This was an amendment of the Federal Communication Act. Its purpose was to outlaw featherbedding in the radio industry and it had very little effect on the trade-union movement as a whole.

The Eightieth Congress convened in 1947, with the Republican party in control of both houses. On opening day, the House of Representatives received seventeen labor bills in the hopper.[23] President Truman, sensing a change in labor policy, requested labor legislation in his State of the Union Message. This problem, according to Millis and Brown, was the main concern of Congress to the passage of the Taft-Hartley Act in June of 1947.[24] The stage was now set for the passage of the first major revision of our labor policy since the enactment of the Wagner Act.

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[23]Millis, p. 363.

[24]Millis, p. 363.

President Truman had requested that Congress enact legislation to prevent jurisdictional disputes, to prohibit secondary boycotts with "unjustifiable objectives," to provide machinery to help solve disputes arising under existing collective bargaining agreements, and to create a temporary commission to investigate the whole field of labor-management relations.[25] On April 11 and April 17, 1947, the House and Senate Committees respectively, reported favorably on a new comprehensive labor law.

The hearings in the House lasted six weeks, and a hundred and thirty witnesses were heard or had testimony inserted into the record. The Senate hearings lasted about six weeks also and heard testimony from eighty-three witnesses.[26] After lengthy debate, the bill was passed by both Houses and sent to the President. On June 20, 1947, the President vetoed the bill with the following objection to it and the reasons for his return of the message, unsigned:[27]

> The most fundamental test which I have applied to this bill is whether it would strengthen or weaken American democracy in the present critical hour. This bill is perhaps the most serious economic and social legislation of the past decade. Its effects, for good or ill, would be felt for decades to come.

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[25] Ibid., p. 364.

[26] Ibid., p. 375

[27] Millis, p. 390

> I have concluded that the bill is a clear threat to the successful working of our democratic society.

Without debate or discussion, the House immediately after hearing the veto message, voted to override it by a total of 331 to 83. The Senate was not so hasty and agreed on postponing the vote till June 23, 1947.[28] The delay was for the purpose of feeling out the sentiments of the country. On June 23, 1947, the Labor Management Relations Act became law when the Senate overrode the veto 68 to 25.

Labor referred to the Act as a "Slave Labor Act," but the the National Association of Manufacturers called it a "Magna Carta for Employers" and a "Bill of Rights for the Individual Workingman." It was apparent that the Act would mean many things to many men.

Following the enactment of the Taft-Hartley Act, seven more states passed right-to-work laws and eight states repealed right-to-work or other laws restricting union security.[29]

As has been indicated, certain economic and political factors had influenced the growth of trade unions during the period under examination. We have seen labor emerge from a period of high growth during World War II into a period where membership grew,

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[28] Ibid., p. 391.

[29] Growth of Labor Law, p. 248.

but at a moderate rate. We will now examine in the remaining chapters, the effect of judicial decisions on union growth.

CHAPTER III

FEDERAL COURTS AND LABOR UNIONS DURING THE PERIOD 1945 - 1948

Numerous cases involving labor relations were decided by the Federal Courts during the 1945 to 1948 period. For the purpose of this thesis, certain leading decisions have been selected to ascertain if they had influenced union growth and in what direction. They will be discussed under the following topic headings: (a) Organization; (b) Strikes, Boycotts and Picketing; (c) Collective Bargaining; and (d) The Individual and the Union.

A. Organization

Under this general topic will be discussed the attempts of labor to organize and the litigation that resulted from some of these attempts. During the period under examination, eleven cases have been studied and selected as representative of the period.

The first case of this period was Republic Aviation Corporation v. National Labor Relations Board.[1] The petitioner appealed

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[1] 324 U. S. 793 (1945).

the ruling of a Circuit Court of Appeals in affirming the cease and desist order of the National Labor Relations Board. Petitioner had discharged an employee for soliciting and distributing union cards and applications in violation of a "no soliciting" rule. Three other employees were discharged for wearing union steward badges after having been requested to cease doing so on several occasions. The United Auto Workers-Congress of Industrial Organization was actively seeking to organize Republic.

The NLRB respondent determined that this action by the Company was in violation of Section 8(1)(3) of the National Labor Relations Act. The Circuit Court of Appeals affirmed a lower court enforcement of the Board's order.

On April 23, 1945, the Supreme Court ruled that the Wagner Act left to the National Labor Relations Board the right to determine what constituted an unfair labor practice. The Board having determined that the "no soliciting" rule was a violation of Section 8(1), the Court was merely to examine if such action were warranted under the evidence presented. The Court rejected the Company's contention that the "no soliciting" rule applied to all solicitors regardless of the nature of their aims. Since the solicitation occurred on the employee's own time, this action was a recognized union activity and could not be prohibited.

The matter of wearing of steward badges before certification was considered to be proper since there was only one union seeking

to represent the employees of Republic.

The Republic decision had a decided effect upon union growth during this period. The Supreme Court, in prohibiting the use by a company of restrictive rules against union organizing on company property, allowed unions to solicit members where conditions made it impossible once the employees left their jobs. Gregory, in his Labor and the Law, cited this case as an important decision and noted that after the workers left the plant, they peripherated for many miles by automobile and would have been difficult to reach.[2] Thus, this decision allowed unions to organize industries where normal off-premises attempts would be very difficult, if not impossible.

In Hill v. Florida,[3] the Attorney General of Florida filed an injunction against the petitioner Hill in a local court. The basis for this injunction was that Hill had acted as a business agent for a union without obtaining a license as required by a Florida statute. This statute required the registration and licensing of any person seeking to perform the function of a union organizer. Failure to do so was a misdemeanor. Hill was convicted in the trial court, and appealed to the Florida Supreme Court. His bill of particulars was dismissed.

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[2]Gregory, Charles O., Labor and the Law, New York, 1961, Second Revised Edition, p. 353.

[3]325 U. S. 538 (1945).

Hill then appealed his conviction to the Supreme Court of the United States claiming that the Florida statute conflicted with the National Labor Relations Act and violated the Fourteenth Amendment of the Constitution.

On June 11, 1945, the United States Supreme Court ruled that Florida had enacted a law which prohibited the rights of employees to freely choose their collective bargaining representatives. Indicating that Congress intended in its enactment of the Wagner Act to grant such freedom, the court found that the State was frustrating such exercise. If the State could require the registration of a person it wished to license, then the choice by the employees was greatly reduced. The Supreme Court of Florida was overruled and judgment was in favor of Hill.

The State of Florida sought a means to control, regulate and restrict union activity within its boundaries. Although this decision concerned a local statute, it did reemphasize the supremacy of federal law over state law. In the opinion of Gregory, this case was a leading case in a long series of precedents affirming federal supremacy.[4] The immediate effect upon union growth outside of the state of Florida is questionable since federal supremacy over state had been decided before. However, it may be considered as a deterrent precedent by other Southern states.

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[4]Gregory, p. 531.

In May Department Store d/b/a Famous-Barr and Co. v. National Labor Relations Board,[5] the question of certification of the proper bargaining unit was decided. Famous-Barr petitioned the United States Supreme Court to set aside a lower Federal Court ruling finding it guilty of a violation of Section 8(1) of the Wagner Act. Petitioner contended that the National Labor Relations Board had erred in certifying the St. Louis Joint Council, United Retail, Wholesale and Department Store Employees of America, A.F.L. as the bargaining agent for twenty-eight of its five thousand employees. Petitioner decided to challenge the decision and refused to bargain.

The Company also refused to include these twenty-eight employees in a wage increase request it had filed with the War Labor Board. The respondent then cited the Company for a violation of Section 8(1)(5).

The decision of the Supreme Court rendered on December 10, 1945, said that the Board had the right to determine the proper bargaining agent for a plant or store and could restrict it to include a certain portion rather than the entire store. The action of the Company in excluding these employees represented by the Union was discriminatory. Therefore, the evidence indicated a violation of Sections 8(1)(5).

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[5]323 U.S. 192 (1945) Rehearing denied 326 U.S. 811 (1945).

This decision had some effect upon union growth since it established that the Board could determine the proper bargaining unit from a section or a department rather than the entire body of the plant or enterprise. Application of the ruling could foster unionization among even a small group of employees.

A similar decision was rendered in National Labor Relations Board v. Norfolk Southern Bus Lines Corporation.[6] The Company was composed of two divisions, one operating in Virginia and the other in North Carolina. The Union was successful in organizing the Virginia division, but not the North Carolina group. The Board certified the Union as the bargaining agent for the Virginia division. The Company refused to bargain, contending that the Board could not conclude that the division was a separate bargaining unit. The Company was cited for a violation of Section 8(1) of the Wagner Act.

In its petition to the Circuit Court of Appeals, the Company proposed that it consisted of two bargaining units, one for each division. The Court rejected the Company's appeal and cited the numerous federal precedents, including the May case, which empowered the Board to determine the proper bargaining unit.

The May decision, as expressed later in the Norfolk case, had a pronounced effect upon union organization. Since the main

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[6] 159 F(2)d 516 (1946).

reason for the Board's splitting of the Company into separate bargaining units was to foster unionism, the application of this would certainly provide unions with a means to gain a foothold in areas previously difficult to organize. Gregory concluded that the purpose of this action by the Board was to foster the growth of unions.[7]

The apparent conflict which had existed concerning the organization of supervisory employees was resolved in the matter of Packard Motor Car Company v. National Labor Relations Board.[8] Prior to the Packard case, the Board had held several different opinions on the right of supervisory personnel to organize. In the Union Collieries[9] and Goldchaux Sugars[10] cases, the foremen were allowed to organize, but with a change in the membership of the Board, the right was denied in the Maryland Drydock matter.[11] Thus, matters remained until the Packard case.

The dispute arose over the right of the foremen of Packard to join a unit of the Foremen's Association of America. This attempt was not recognized by the Company and led to the court case. The

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[7]Gregory, p. 434.

[8]330 U. S. 485, (1947).

[9]Union Collieries Coal Company, 41 N.L.R.B. 961 (1942).

[10]Goldchaux Sugars, Inc., 44 N.L.R.B. 874 (1942).

[11]The Maryland Drydock Company, 49 N.L.R.B. 733 (1943).

Packard Company appealed a lower circuit court ruling enforcing an injunction calling upon the Company to cease and desist from refusing to bargain with the Union.

In its petition to the Supreme Court, the Company claimed that if a foreman were allowed to join a labor organization, he could no longer perform his faithful function as a member of management. A conflict of loyalties would involve forcing the foreman to choose between his duties as a union member and his responsibilities as a foreman if the ruling were permitted. The final argument presented by the Company to the Supreme Court was the basic democratic philosophy underlying the National Labor Relations Act. This would be threatened by the case.

The Court decision of March 10, 1947, established the rights of foremen to join unions and resolve the confusion of the previous decisions of the Board. The roles of the foremen had changed, the Court noted. The amount of judicial determination, hiring, firing and layoffs were no longer functions of the foremen. These functions had been assumed by others. The rights of foremen to determine their own working conditions were not to be dismissed because they represented management at times.

The Company's argument of dual loyalties was dismissed as merely a selfish attempt upon the part of the Company to protect its own interest. Nothing in the National Labor Relations Act can be construed to prohibit the rights of foremen to join a union.

At the same time the Supreme Court was ruling on the Packard case, the New York Labor Relations Board, in two cases, recognized the rights of foremen to join a union. The involved companies petitioned the Supreme Court for a ruling to set aside the Board's action. The Supreme Court ruled on both cases at the same time. They were: Bethlehem Steel Company v. New York Labor Relations Board[12] and Allegheny Ludlum Steel Corporation v. Kelley.[13]

Plant foremen of the Bethlehem Steel and Allegheny Steel Companies filed petitions with the New York Labor Relations Board to obtain certification of their unions as the collective bargaining agents. The Board, in compliance with the New York Labor Relations Statute, certified the Unions after noting that the National Labor Relations Board was pursuing two different attitudes. The Companies appealed the Board's ruling to the New York State Supreme Court. The Court rejected the appeal and contended that the Board had the right to certify the Unions. The Companies then took the matter to the United States Supreme Court.

In their appeal, the Companies contended that the New York Board's action conflicted with the National Labor Relations Act. Only the National Labor Relations Board, according to the Company, could certify the bargaining agents for the foremen. The State

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[12]330 U. S. 767 (1947).

[13]330 U. S. 767 (1947).

contended that while the federal power over labor relations was paramount, it was not exclusive. Furthermore, until the Federal government acted, the State could operate and decide the matter.

On April 7, 1947, the Supreme Court rendered its decision. The Court carefully traced the history of Congressional authority over interstate commerce, even though the issue was of a local nature. Having established the supremacy of the federal law over the state law, the Court then indicated that Congress had chosen to delegate the jurisdiction of its power to the National Labor Relations Board. The mere fact that the Board had chosen not to act in these two cases did not in any way indicate that it had ceased to have jurisdiction in this matter. The refusal of the Board to certify the Unions was an exercise of its discretion.

The question of state usurpation of federal power was the next point of law. While the State could act where Congress allowed it to, said action must in the Court's opinion be in keeping with established federal policy. Where that policy is not clear, the application of the State Board's policy would only add to the confusion.

Justices Frankfurter and Murphy delivered separate opinions, contending that a prior agreement between the National Board and the New York Board had granted authority of the State Board to act in areas vacated by the National Board.

These three cases had a decided effect upon union organization

between the period of 1947 - 1948. Like the Hill case, the question of federal supremacy over state laws was reaffirmed. The confusion over the National Board's change in policy concerning the organization of foremen was resolved in the Packard decision. The issue of the rights of foremen to join unions was considered to be one of the "hottest" to arise under the Wagner Act.[14] The matter was finally resolved when the Taft-Hartley Act was passed. Foremen were allowed to form organizations to represent them, but employers were not required to bargain with them.

During its hearings on the Taft-Hartley Act, the House Committee on Education and Labor concluded that less than one per cent of those supervisors who were eligible to organize joined the Foreman's Association.[15] The Committee contended that the pressure on foremen to organize came from outside unions attempting to organize the foremen. Therefore, it can be concluded that few foremen availed themselves of this opportunity to join unions. Hence, the effect upon the increase in trade union membership was very slight.

The final two Supreme Court cases concern the organizational activities of plant guards. In the case of National Labor

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[14] Gregory, p. 347.

[15] Smith, Russell A., Labor Law, Indianapolis, 1953, 2nd Ed., p. 74.

Relations Board v. E. C. Atkins and Company,[16] employees of Atkins petitioned the National Labor Relations Board to certify Local 163 of the International Machinist as the bargaining agent for the guards. The Board certified the Union and a Federal District Court issued an injunction requiring the Company to cease and desist from refusing to bargain with the Union. The Circuit Court of Appeals, upon a petition by the Company, refused to sustain the lower court. The Court said that the guards were members of the Armed Forces and not employees of the Company. The Board appealed to the Supreme Court.

In its petition, the Board cited that the guards were not members of the armed forces and that the only authority the Army exerted was in the area of security clearance. The Company said that the exercise of security procedures by the Army removed the guards from an employee status. Also, if they belonged to the same bargaining unit as the employees, then the loyalties of the guards would be questionable in cases of labor strife.

On May 19, 1947, the Court ruled in favor of the Board. The policy of allowing the Board the right to determine the appropriate bargaining unit and who the employees were under the Act, had been previously decided in numerous decisions. The issue of conflict of loyalties was dismissed as merely an attempt on the part

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[16] 331 U.S. 398.

of the Company to refuse to bargain. The Circuit Court was reversed and ordered to issue a decision in keeping with the Supreme Court's ruling.

On the same day, the Court also ruled in the matter of National Labor Relations Board v. Jones Laughlin Steel Company[17] which raised the same issue of plant guards' rights to organize. The facts were similar to those in the Atkins case. The guards had sought to join the United Steel Workers Union. The Board had certified a separate bargaining unit for the guards since the Union already represented the other plant workers. The Company refused to bargain and was cited for violation of Section 8(1) of the Wagner Act. The Circuit Court in this case allowed the guards to organize, but overruled the Board's right to place the guards in the same union as that of other workers. The Board appealed to the Supreme Court.

The Court followed the same reasoning it had in Atkins. It allowed the Board the right to determine the bargaining unit for the guards.

Prior to the enactment of the Taft-Hartley Act, the question of the right of foremen to join unions was not determined. With these two decisions, the right was affirmed and the trade union movement was allowed to organize the guards. This had an effect

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[17] 331 U. S. 398.

upon union growth since it allowed unionization of guards. A company no longer could refuse to bargain or contend that the guards were not eligible to join a union. With the Taft-Hartley Act, the guards were given a right to join unions so long as it was a separate bargaining unit and did not include non-guards. [Section 9 (b)(3).]

The attempts of the International Workers of America, C.I.O. to organize negroes working in the South illustrated the problems encountered. The case of National Labor Relations Board v. Port Gibson Veneer and Box Company[18] arose when the Board, after an investigation, determined that the Company required all employees (mostly negro) to sign and submit an application containing the statement:

> if employment is obtained I agree to assume all the risks and dangers incident thereof. The company shall have the right to dismiss me at any time with or without cause . . .

The use of this application had been discontinued during World War II. The application was again required of all employees, whether new or old, after the Union had begun an organizational campaign. The Company refused to recognize the Union once the Board had certified it, but did discontinue the use of the application form. The Board obtained an injunction from a federal court and the Company appealed the ruling to the Circuit Court of

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[18] 167 F(2)d 144 (1948).

Appeals.

The Circuit Court of Appeals concluded that the Company had refused to bargain with the Union despite the request of the Board. Furthermore, the Court noted that the use of the application was in violation of Sections 8(1)(5) since none of the employees could read or write and could not understand what they were signing.

This case illustrated the use of the "yellow dog" contract under a new guise--that of an application form. The Company attempted to resist unionization by informing the employees that they could be dismissed without cause. This ruling helped prevent the application of this contract among a group of employees who had long been neglected by organized labor. The immediate effect upon union growth is negligible since this had very little direct effect on unionization in the South.

The question of white collar workers' right to organize was decided in National Labor Relations Board v. Swift and Company.[19] The issue was whether the clerks and members of the standards department of a Swift plant could join Local 49 of the United Packing House Workers of America, C.I.O. The Union sought and obtained certification from the National Labor Relations Board. The Company opposed the ruling and cited the fact that the clerks and

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[19]162 F(2)d 575 (1947).

allied personnel were not employees under the Act, but were part of management.

The question before the Circuit Court was what constituted an employee as defined under the National Labor Relations Act. The Court first affirmed the Board's power to determine who was an employee. The Court examined the evidence upon which the Board ruled that the clerks were employees as defined under the statute. The work performed indicated that they did not have any decision-making roles nor any other functions of a manager. In its decision of June 11, 1947, the Court found that the Company had violated Sections 8 (1) (5) of the Wagner Act by refusing to bargain with the Union.

Since the end of World War II, the trade union movement had tried with some moderate success to organize the ever growing number of white collar workers. The importance of this case is that it indicates that white collar workers could be considered employees and thus select representatives to bargain for them. This decision removed an obstacle to further organization and can be concluded to have had a helpful effect upon union growth.

B. Strikes, Boycotts and Picketing

The second group of court cases concerns the attempts of employees to engage in collective activity. Certain economic means are employed by trade union adherents to achieve goals they

consider desirable. This activity usually was expressed in strikes, primary and secondary boycotts and picketing. Sometimes the exercise of these means led to litigation. The number of cases treated under this subject are almost as many as arose under the first topic.

Three Supreme Court cases will be discussed, namely: Allen Bradley Company v. Local Union Number 3, I.B.E.W., United States v. United Mine Workers and Cole, et al. v. Baldwin. Each case concerns one of three activities of economic persuasion attempted by labor unions.

In Allen Bradley Company v. Local Union Number 3, I.B.E.W.,[20] the petitioner, an electrical equipment manufacturer located outside of the state of New York, claimed the respondent engaged in an agreement with local contractors to boycott its products. Through closed shop agreement with local employees, the Union could control employment opportunities for its members. One of the conditions of these contracts was that the contractor would install equipment manufactured locally. The resulting combination was of phenomenal growth for the local union, contractors and manufacturers.

The Company entered a suit in a Federal District Court alleging that the Union had violated the Sherman Anti-Trust Act.

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[20] 325 U.S. 797, 65 S. Ct. 1533, (1945).

The District Court ruled in favor of the Company; however, a Circuit Court of Appeals reversed the decision. The Company appealed to the Supreme Court.

On June 18, 1945, the Court rendered its decision. The actions of the respondent were found to be in violation of the Sherman Anti-Trust Act. The injunction enjoined such action to be limited to those which involved a combination with any non-union group. So long as the union persuaded a course of action with the contractors seeking union goals, such action was not a violation of the Act. But when the Union participated with a combination of business men who had complete power to eliminate competition among themselves and others, then this action was not within the exemptions of the Clayton and Norris-LaGuardia Acts.

This case did not have any direct effect upon union growth as there was no question of forbidding activity considered to be protected under the Clayton and Norris-LaGuardia Acts. As legal authorities noted, the Union had the right to engage in such activities and the issue involved was the choice of its allies in this activity.[21] The merit of this case is that it provided anti-union forces, an example of union monopoly attempts, to use in its campaign for restrictive legislation.

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[21]Smith, p. 424.

Perhaps the most publicized case of this period was that of United States v. United Mine Workers.[22] As has been discussed in Chapter II, the union under the leadership of John L. Lewis had struck the mines which were at that time being operated by the Secretary of the Interior. The strike was the result of a breakdown in negotiations since the government had refused to discuss renegotiation of the contract.

On November 18, 1946, the Attorney General of the United States requested a declaratory judgement against Lewis and the Union. On the same date, a Federal District Court issued an injunction ordering Lewis to call off the strike. The Union refused to obey the order and was found in contempt of court and fined $3,500. Lewis was also cited for contempt and fined $10,000. The Union appealed the decision to the Supreme Court contending that the action of the Court was contrary to Clayton and Norris-LaGuardia Acts.

In a five-to-four decision rendered March 6, 1947, the Supreme Court ruled in favor of the government. The Norris-LaGuardia Act Sections 13(a) and (b), according to the Court, did not apply in those cases where the government was an employer. The Court rejected the Union's contention that the government was not an employer and concluded that the government, in order to keep

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[22] 330 U.S. 258, 67 S. Ct. 677 (1947).

production going, substituted itself for the operators. The dissenting justices claimed the District Court Judge had exceeded his authority in granting an injunction. They contended that the government was not the actual owner of the miners; hence the Norris-LaGuardia exemption did not apply.

This case had a pronounced effect upon union growth. The action of the Union in striking focused the attention of the public on the failure of the Union to keep production going in an industry which had a direct effect upon the health and welfare of the country. Newspapers criticized the action of the Union and clamored for restrictive legislation to prevent the reoccurrence of such strikes. The action of this Union was cited by critics as a need for restrictive legislation because of its irresponsibility. This case certainly helped to arouse public opinion for some sort of controlled legislation.

In Cole et al v. State of Arkansas,[23] the state of Arkansas convicted Raymond Cole and several other persons of a violation of an Arkansas Statute forbidding persons to assemble and engage in violence where a labor dispute was in progress. The defendants were convicted and sentenced to a year in prison. The convictions were appealed to the Supreme Court of the United States.

The Court reversed the decision. It found that no violence

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[23] 333 U.S. 196.

had occurred and that the employees had merely engaged in lawful assembly. The Court also noted that the evidence at the time indicated that no violence had occurred.

This case had minor effect upon union gorwth, since the question was one of a lack of due process of law.

Two picketing cases were decided by Federal District Courts. In the matter of Local 251, United Electrical Radio and Machine Workers of America, C.I.O. et al. v. Raymond Baldwin et al.[24] The Union had been engaged in a strike at the Niles-Benent-Pard Company in West Hartford, Connecticut. The Company started a back-to-work movement and the Union tried to block the entrances of the plant to prevent its success. Homes of workers who had returned to work were also picketed. The State Police, in order to prevent violence, limited the number of pickets to fifteen at each plant gate. Picketing at the homes was prohibited and any person engaged in such action was to be arrested for "breach of the peace." Two picketers were arrested and convicted of a "breach of the peace," for picketing a home.

The Union appealed the conviction to the Federal District Court. The Court found it had jurisdiction and cited the Thornhill doctrine, which held that peaceful picketing could not be

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[24] 67 F. Supp. 235, (1946).

forbidden by a state law.[25] Thus the State could not restrict the number of pickets at the plant, so long as no violence occurred.

The picketing of homes could be restricted since it was a proper matter for the State and could be construed to be a "breach of the peace." The right to picket is not absolute and may be limited as indicated in the Meadowmoor case.[26] Conviction of "breach of peace" upheld.

This case had no real effect upon union growth since the two cases cited in the District Court brief had already established the precedents regarding picketing.

In the matter of Ethel M. Gomez d/b/a Arthur Murray Studio v. United Office and Professional Workers of America, C.I.O.[27] the issue of radius of picketing was questioned. The Union had been engaged in a labor dispute with an Arthur Murray Studio in the City of New York. Two members of the Union Local 66 picketed the Arthur Murray Studio in Washington, operated under a franchise by Ethel M. Gomez. No labor dispute existed between the petitioner and her employees.

The petitioner, in her request to a Federal District Court,

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[25] Thornhill v. Alabama 310 U.S. 88 (1940).

[26] Milk Wagon Drivers Union v. Meadowmoor Dairies 312 U.S. 287, (1941).

[27] 73 F. Supp. 679 (1947).

sought an injunction to forbid the picketing since no labor dispute was involved. The Union contended that the Court could not issue an injunction since this was a labor dispute and was protected under the Norris-LaGuardia Act. The Court agreed with the petitioner that no labor dispute existed; that it could restrict the picketing to a radius within the area of New York City. The Court cited Section 4, 13 (a) of the Norris-LaGuardia Act. Injunction issued restriction of the picketing to the area of New York.

This decision had a negative effect upon union growth because it greatly restricted the Union from applying pressure to a franchised dealer of a company it was engaged in a labor dispute with.

Three cases were selected during this period involving secondary boycotts.

Dixie Motor Coach Corporation v. Amalgamated Association of Street Electrical and Motor Coach Employees[28] the dispute began in 1947, when the Union informed the local representative of the Brotherhood of Railway Trainmen and Railway Clerks that it would picket a railway station operated by Dixie Motor Coach Corporation. The Union was engaged in a labor dispute with the Southern Bus Lines, which operated from a station called the "Trailways Terminal." This station was owned by the Dixie Motor Coach Corporation.

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[28] 74 F. Supp. 952 (1947).

As a result of this picketing, the Brotherhood did not cross the picket line and the operations of Dixie Motor Coach Corporation came to a halt.

The Company went to court under Section 303 of the Taft-Hartley Act and requested an injunction to forbid the Union from picketing the Trailways Terminal. The Company said no labor dispute existed between the Union and the Company. The Union contended that the Norris-LaGuardia Act forbade the issuance of the injunction. (Sections 101-115).

The Court, in granting the injunction, indicated that since no labor dispute existed between the Union and the Company, the Norris-LaGuardia Act did not apply. The action of the Union in boycotting the Trailways Terminal was in violation of Section 303 of the Taft-Hartley Act.

This decision would have allowed a private party the right to seek an injunction when the actions of a union were in violation of Section 303 of the Taft-Hartley Act. However, on November 26, 1948, a Circuit Court of Appeals found that the Act allows a private party to seek damages only from such action and not injunctive relief.[29] In view of the Circuit Court of Appeals' decision, this case had no effect upon union activity.

A secondary boycott by the International Teamsters Union

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[29]75 F. Supp. 414 (1947).

resulted in the case of Douds v. Local 294, International Brotherhood of Chauffeurs, Warehousemen and Helpers of America, A.F.L. On September 10, 1947, Rabouin, a local owner of a transport business, leased certain vehicles to the Middle Atlantic Transportation Company. All shipments, operators and helpers were under the control of Mid-Atlantic. Rabouin had an agreement with Local 294 and his employees were members of the Local. Mid-Atlantic, on the other hand, operated with non-union personnel. Because of the use of Rabouin equipment by Mid-Atlantic and the subsequent operation by non-union members, Local 294 struck Rabouin.

Rabouin filed charges with the National Labor Relations Board alleging that Local 294 had violated Section 10 (h) (j) (1) of the National Labor Relations Act. The Board, after due investigation, requested an injunction from a Federal District Court to compel Local 294 to cease and desist.

The Court, acting on the Board's injunction, determined that there was no labor dispute between Rabouin and Local 294 and that the actions of the local were a secondary boycott and in violation of Section 10.

A year later, another secondary boycott matter arose in Le Baron v. Printing Specialties and Paper Convertors Union, Local 388, A.F.L.[30]

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[30] 75 F. Supp. 678 (1948).

The circumstances were similar to those of the Douds case. The Sealright Pacific Limited was a manufacturer of paper milk bottle caps and closures for sanitary food containers. The Company had a contract with the Los Angeles Seattle Motor Express Incorporated to deliver its products. On November 13, 1947, the vice-president of Local 388 informed the motor carrier that it would be picketed if it continued to haul Sealright's products. On November 14, 1947, two trucks of the motor-carrier were picketed when they reached a terminal to discharge Sealright's freight. The motor-carrier, as a result of this action, informed the Company it could no longer haul its products.

The Company filed a complaint with the National Labor Relations Board charging the Union with a violation of Section 10. The Board, after an investigation, requested a Federal District Court to enjoin Local 388's action.

The District Court, in issuing the injunction, dismissed the Union's claim that Norris-LaGuardia Act prohibited this cause of action. Finding no labor dispute, the Court found that the Union had violated the Taft-Hartley Act by engaging in a Secondary Boycott.

The importance of these two cases upon union growth is that a union could not force a company to allow it to be organized through its secondary boycott activities.

C. Collective Bargaining

Five cases have been selected in this area as having an influence upon union growth during this period. In the matter of Anderson et al v. Mt. Clemens Pottery Company,[31] the issue was raised when several employees sued Mt. Clemens charging that the company had violated Section 16 (b) of the Fair Labor Standards Act. The Company had a policy of paying over 90 per cent of its 1,200 employees on piece rate bases. The computation of working time was determined when the employees punched the time clock. Delays of fifteen to twenty minutes were incurred due to the distances that the employees had to walk from the place where they dressed for work. Also, delays up to eight minutes were encountered while waiting to punch the clock. The District Court referred the question of pay to a Master and upon receipt of his report, rendered a decision. The Court ruled that under Section 7 (a) of the Act, the employees were entitled to pay for these delays.

The Circuit Court reversed the lower court because it considered this time not to be compensable. The employees appealed to the Supreme Court. The Court held that "pre-working" time spent in walking to and from work and performing certain preparatory tasks was compensable. The case was returned to the lower

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[31] 328 U.S. 680 (1947).

Circuit Court for determination of the actual time spent by the workers in preparation for work. The lower court found that this amounted to less than twelve minutes a day and was too trifling a sum to be compensated. The Supreme Court refused to rehear the case and judgement remained.[32*]

At the same time the issue of portal-to-portal pay was being raised; the Courts were presented with the problem of bargaining over pension plans.

In Inland Steel Company v. National Labor Relations Board[33] the issue of bargaining over pension plans was decided. The Company had refused to discuss with the United Steel workers the issue of recently adopted retirement and pension plans. The Union complained to the Board that the Company had violated Section 8 (a) (5) of the National Labor Relations Act. The Company contended that Section 8 (a) (5) does not impose any duty to bargain except on rates of pay, wages, hours or other conditions of employment. Nowhere were retirement or pension plans included. The Company also noted that it was a management prerogative to fix retirement ages exclusively. The Board rejected the Company's

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[32] 328 U.S. 822 (1947).

[*] This matter was finally settled by the Portal-to-Portal Pay Act of 1947.

[33] 170 F (2) d. 247 (1948).

brief and the matter was appealed to the Circuit Court.

The Circuit Judge said that a company is required under Section 8 (a) (5) to bargain collectively in respect to rates of pay, wages, hours and working or other conditions of employment. He concluded that pensions and retirement plans were included under Section 9 as emoluments of value and thus bargainable.*

The Mt. Clemens decision had minor effect upon union growth. The Inland decisions made pension and retirement plans bargainable. These were strong points to be emphasized in union organizational campaigns and proved to help organize and recruit new members.

Three other major cases were decided by the Courts in this period. The matter of Hughes Tool Company v. National Labor Relations Board[34] developed when the Company continued to deal with a union no longer certified as the collective bargaining agent of the employees.

The United Steelworkers of America complained to the Board that Hughes was still processing grievances with the Independent Metal Workers who had been recently decertified by the Board. The Company refused to obey the cease and desist order of the Board, contending it had a right to process these grievances. A lower court issued an injunction at the request of the Board.

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*Judgement affirmed by the United States Supreme Court.

[34]147 F (2) d. 69 (1948).

The Company appealed.

In its decision, the Circuit Court of Appeals found that the Company had violated Section 9 of the National Labor Relations Act by refusing to bargain with the certified representatives of the employees.

The Board's decision was upheld by the Court, but it said that a company could make adjustments with a particular employee concerning some question of fact or issue peculiar to that employee. The company was required to notify the union of the grievance, but did not have to bargain with the union, unless the union demanded a right to be heard. The union had the duty to process the grievances of non-union members without any discrimination against them.

This is an important decision because it required unions to process the grievances of non-union members as long as the union was the collective bargaining representative. The Taft-Hartley Act amended the Wagner Act's Section 9(a) to allow the final disposition of grievances between an employer and employee inasmuch as the union was represented. Thus, the exclusive role of a bargaining agent for all employees in the unit was somewhat dismissed. This had a positive effect because it required the employer to deal directly with the union.

The granting of merit increases without union agreement was argued in National Labor Relations Board v. J. H. Allison and

Company.[35] The Union filed a complaint with the Board to the effect that the Company had violated Section 8(a)(5) of the Act by granting merit increases to certain employees without first discussing it with the Union. The Board petitioned a Federal District Court after the Company refused to cease and desist from refusing to bargain. The Company appealed the action to the Circuit Court of Appeals.

The appeal cited that "the ex parte giving of merit increases does not come within the scope of the Act, absence of a provision in the contract to the contrary." The Court rejected this brief, citing that the Supreme Court had ruled that the company must, under Section 9(a) of the Act, bargain on wages.

This case had an effect upon union growth since it enforced the requirements of a company to bargain with a union on matters indicated in Section 9 of the Act.

The final case under this topic is National Labor Relations Board v. Phoenix Mutual Life Insurance Company.[36]

The Board charged that the Company had fired one of its salesmen for writing a letter in criticism of a company policy. The Board found that the salesman was a spokesman for other members of

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[35] 165 F(2)d. 766 (1948).

[36] National Labor Relations Board v. Phoenix Mutual Life Insurance Co., 165 F(2)d.766 (1948).

the Company's district office. The Sales Manager had warned other employees about interfering with Home Office policies. The discharge, in the Board's opinion, was a violation of Section 8(a)(1) and 8(a)(3) of the Wagner Act. The Federal District Court issued an injunction requiring the Company to reinstate the employee and to bargain over the issue.

The Company appealed the decision to the Circuit Court of Appeals and said that the salesmen were not employees, but were private contractors engaged in selling insurance for the Company. The Court noted that the Company had negotiated a contract with a local union concerning the salesmen and had established health and welfare and pension plans for them. Therefore, they were employees under the act and the Company must bargain with them. The discharged employee was to be reinstated without loss of pay.

This case had an effect upon union growth, especially in the organization of the insurance industry which had long resisted union activity and maintained that its salesmen and adjusters were independent contractors and not employees. This decision clarified the fact that under certain conditions, salesmen were employees and could join unions.

D. The Individual and the Union

The three major cases of this period heard in the Federal Courts dealt with the relationship between the individual and the

union. These are concerned with those rights which an individual has and the union's duties. The question of refusal of unions to accept members because of race was raised in Railway Mail Association v. Corsi.[37]

The Association appealed to the United States Supreme Court a ruling of the New York Supreme Court finding that it had violated a New York Statute forbidding discrimination in union membership. The Court had found that the Union had limited its membership "to eligible postal clerks who are of the Caucasian race, or native American Indians." The Union contended that the Court decision was contrary to the Fourteenth Amendment of the Constitution.

In a unanimous decision, the United States Supreme Court held that a union must open its ranks to all persons regardless of race, creed or color. The Constitution did not protect unions when they sought to restrict members because of race. Unions were not to be considered social clubs or private organizations and must expect to be treated like public organizations.

This decision had little effect upon union growth since most of the unions opened their ranks to all persons regardless of race. Those unions practicing discrimination were mostly in the railroad and building trade industries. Court decisions in the late 50's

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[37] 326 WS 88 (1945).

and early 60's have removed most of the restrictive laws and practices concerning minorities.

One of the most controversial decisions of this period was rendered in Elgin, Joliet and Eastern Railway v. Burly.[38] Several employees of the railway and members of the Brotherhood of Railway Trainmen brought suit in a Federal District Court claiming that the Brotherhood lacked authority in settling a dispute between the petitioner and the respondent. The claims were for alleged violations of the starting time provisions of a collective agreement. The District Court ruled in favor of the Carrier, holding that the award of the Railway Adjustment Board was a final adjudication of the issue. The Court of Appeals reversed the judgement holding that the record presented a question of fact whether the union had the authority for the respondents "to negotiate, compromise and settle" the issue. The Carrier appealed to the Supreme Court.

In a split five to four decision, the Court traced the duties of the Mediation and Adjustment Boards under the Railway Labor Act of 1934. The respondents, the Court noted, had a cause of action since the Brotherhood's constitution, of which the Carrier had knowledge, forbade union officials from disposing of individual claims under the Act without specific authority from the individual

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[38] 325 U.S. 711 (1945) reheard 327 U.S. 661 (1946).

themselves. The evidence indicated that no authority had been given by the respondents.

The main issue was that the Union could not discharge the claims of the individuals even though the Carrier and the Brotherhood had agreed to accept the Board's decision under the Railway Act. Minor disputes under the Act were to be referred to the Railway Adjustment Board, as was done in this case. While the Board had the right to decide the issue, it appeared that the evidence concluded that the Union did not have authority to submit the issue to the Board.

The Carrier maintained that the Act, by its terms and purposes, conferred upon the collective agent the exclusive power to settle the grievances by negotiation and contract. The Court struck this argument down, claiming it would deprive the aggrieved employee of an effective voice in any settlement and of an individual hearing before the Board. The case was reheard after several large unions had petitioned the Court to reconsider the question. The Court reaffirmed its original position.

The case raised the issue of the collective bargaining agent's inability to resolve any issue without complete consent of the individual members involved. The United Auto Workers, after this decision, amended their constitution to the effect that the Union

had exclusive power to appear and act for the member.[39]

The effect upon union growth was very small since most of the unions amended their constitutions to the extent that the members allowed them to settle all of their grievances.

The final federal case in this area was another railroad matter--Lewellyn v. Fleming.[40] The petitioner entered a suit in a Federal District Court charging that his seniority right had been violated when the Order of Railway Conductors had been given the opportunity to let one of its members accept a newly created opening for a conductor. Lewellyn maintained that he had the longest service in the yard where the opening occurred. While he was not a member of the Order, he maintained that the Fifth Amendment of the Constitution protected his right to the job.

The District Court contended that the agreement between the railroad and the Brotherhood was made pursuant to a basic Congressional policy expressed in the Railway Labor Act. Lewellyn appealed to the Circuit Court of Appeals.

The Court, in its decision, cited Section 2 of the Act which indicated that private contracts relating to collective bargaining rights between railroad and employees may not be used to forestall bargaining or to limit conditions and terms of the collective

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[39] Smith, p. 815.

[40] 154 F. (2)d. 211 (1946).

agreements. Thus, all private contracts were to be superseded by the collective agreement.

This decision had an effect upon union growth in the railways since the Railway Labor Act had long established the precedent of collective agreement superseding private contracts.

CHAPTER IV

STATE COURTS AND LABOR UNIONS DURING THE PERIOD 1945 - 1948

In the preceding chapter, Federal Court cases were examined. Cases which were brought before the State Courts, will be discussed in this chapter. Since the enactment of the Norris-LaGuardia and National Labor Relations Acts, the State Courts have been more concerned with regulation of unions in those areas left to them by the Federal Statutes. In the areas of interrelationship between the individuals and the union, also between the union and the international, the state courts have had a dominate role.

Following the method of Chapter III, the cases will be discussed under five general topic headings: (A) Organization; (B) Strikes, Boycotts and Picketing; (C) Collective Bargaining; (D) Disputes Between Individuals and the Union, and (E) Disputes Between Local and International Unions.

A. Organization

Three major cases occurred as a result of the enactment of state laws or amendments to their constitutions, which forbade the employer and the union to enter into or to continue agreements containing "closed" or "union shop" clauses. They were:

American Federation of Labor v. American Sash and Door Company, Lincoln Federal Labor Union v. Northwestern Iron and Metal Company and State v. Whitaker.

In American Federation of Labor v. American Sash and Door Company,[1] the plaintiff, the American Federation of Labor, Phoenix Building and Construction Trades Council, Local 2093, entered suit against the defendant, the American Sash and Door Company. The suit was a test case in which the plaintiff sought to have the defendant comply with a labor contract that only persons belonging to the Union would be employed by the Company or would install the Company's product. The defendant contended that an amendment to the Arizona Constitution, adopted in 1946, forbade this type of agreement. The defendant cited the provisions as:

> No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, nor shall the State or any subdivision thereof, or any corporation, individual or association of any kind enter into agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization.

The plaintiff contended that this provision was a violation of its rights as guaranteed under the First Amendment and protected against invasion by the states under the Fourteenth Amendment to the United States Constitution; and deprived plaintiffs of due

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[1] 67 Ariz. 20, 189 (2d) 912 (1948).

process of law and violated Article I, Section 10 of the United States Constitution. The trial court dismissed the suit and the Union appealed to the State Supreme Court.

The Court ruled on February 12, 1947, that the amendment was constitutional because the state had the power to restrict the right to contract and this was in keeping with the United States Constitution. The people of Arizona had in a referendum enacted the amendment as part of the public laws of the State of Arizona.

A similar law was enacted in Nebraska and was the subject of Lincoln Federal Labor Union, Number 19129, American Federation of Labor v. Northwestern Iron and Metal Company.[2] The plaintiff entered suit against the defendant to enforce a union security provision in their labor agreement. Defendant had continued the employment of one Dan Giebelhouse, who was no longer a member in good standing in the Union. The Company relied on a 1946 statute which forbids the discharge of any employee because of non-membership in a labor organization.

Plaintiff's suit charged that this statute violated its members' right guaranteed and protected under the First and Fourteenth Amendments and Article I, Section 10 of the United States Constitution. The trial court dismissed the suit and the

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[2] 149 Neb. 507, 31 N.W. (2d) 477 (1948).

Union appealed to the State Supreme Court.

On March 19, 1948, the Supreme Court dismissed the plaintiff's appeal citing that the police power of the State of Nebraska empowered it to restrict the right of contract and to protect the right of any person to secure employment. The First and Fourteenth Amendments of the United States Constitution did not apply since the unions were still allowed to exist and to bargain with the employer. The only purpose of this law was to guarantee freedom of employment to the citizens of the State of Nebraska.

The final union security case was State v. Whitaker, et al.[3] The plaintiff, the State of North Carolina, charged that the defendant, Guy Whitaker, had violated a state statute by entering into a "closed shop" agreement with the Ashville Building and Construction Trade Council, American Federation of Labor. The defendant sought a dismissal of the suit because it violated his rights under the First and Fourteenth Amendments and Article I, Section 10 of the United States Constitution. The trial court upheld the state and convicted the defendant.

In his appeal to the State Supreme Court, the defendant contended that the trial court had deprived him of his constitutional rights as cited in his original brief. On December 19,

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[3] 228 N.C. 352, 45 S.E. (2d) 860 (1947).

1947, the Court rejected his appeal and said that Section 7 of the National Labor Relations Act prohibits the making of "closed shop" agreement, but permits a "union shop" under certain conditions. The police powers to enact this statute in the State of North Carolina were not in conflict with the Federal Constitution. Congress did not intend to interfere with the state's establishment of right to work laws.

All three cases were appealed to the United States Supreme Court and the Court in a decision of January 3, 1949, ruled on the constitutionality of these three laws in one decision.[4] The Court held that the enactment of these laws did not violate the First Amendment of the Constitution nor abridge the freedom of speech or the opportunities of unions and their members to "peaceably assemble and to petition the Government for a redress of grievances." Nothing, the Court continued, in the language of these laws indicated a purpose to prohibit speech, assembly or petition. The law merely forbids the employer to act alone or in concert with labor organizations to deliberately restrict employment to only union members.

Secondly, the appellant contended that these laws conflicted with Article I, Section 10 of the Constitution and were without merit and not too clearly established to require discussion.

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[4] 335 U.S. 525, 69 Sp. Ct. 251 (1949).

The North Carolina and Nebraska laws do not deny unions and their members protection under the "equal protection" clause of the Fourteenth Amendment. The appellant contended that the state laws make it impossible for the use of those portions of a contract which were incentive to union growth and weaken the bargaining power of unions. The Court said this may be true; however, the state law made it also impossible to make contracts with company unions and in this respect protect the rights of independent unions. This circumstance alone proved to the Court that it protected employment rights for both union and non-union members. This equal opportunity for all persons is a refutation of the contention of the unions that they are unconstitutional in the opinion of the Court.

The crux of the case was in the issue of: "Does the due process clause forbid a state to pass laws clearly designed to safeguard the opportunity of non-union workers to get and hold jobs free from discrimination because they are non-union workers?" The Court answered that states have power to legislate against known injurious practices in their internal commercial and business affairs so long as their laws do not run afoul of some specific federal constitutional prohibition, or some valid federal law. Under the constitutional doctrine expressed in West Coast

Hotel v. Parrish[5] and Nebbia v. United States,[6] the due process clause is no longer to be so broadly construed that the Congress and state legislatures are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare.

The impact of these three court decisions on union growth was negative. Several states, as indicated in Chapter II, had enacted "right to work" laws and these decisions upholding their constitutionality enabled these laws to be effective in limiting union growth in the states where they exist. The Supreme Court in its decision, delivered by Justice Clarck, cited the fact that they forbade a union security provision which was a useful incentive to union growth. Therefore, it may be concluded that where these laws were enacted, union growth was retarded.

Two cases involving municipalities were decided during this period. In the City of Jackson v. McLeod,[7] the plaintiff, the City of Jackson, Mississippi, acting through its Mayor, had issued an order that no policeman in the city should be a member of a labor union because such membership would result in divided

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[5] 335 U. S. 523, (1949).

[6] 335 U. S. 392, (1949).

[7] 199 Miss. 676, 24 S. (2d) 319 (1946).

allegiance. The Chief of Police, acting on the Mayor's order, dismissed thirty-four policemen, including Defendant McLeod. The defendant appealed to the Civil Service Commission, regarding his dismissal. The Commission ruled in favor of the City. In his appeal of the decision to a Mississippi Circuit Court, the defendant contended that such action was a violation of the Civil Service Act since there was no question of insubordination or any commission or omission of the defendant's duty as an officer of the law. The Circuit Court found that the Civil Service had exceeded its authority and ordered the defendant reinstated. The City appealed to the Supreme Court of Mississippi.

The Court found that the trial court had erred in reversing the action of the Civil Service Commission. The pledge of the defendant in joining the American Federation of State, County and Municipal Employees indicated that he would obey the rules and regulations of the labor organization. Such action for those in private employment is permissible; but in the employment of policemen, it would result in conflict of loyalties.

The majority of states do not have any general statutory regulation restraining state, county or municipal employees from joining unions. However, ordinances or administrative ruling, such as in McLeod, have been enacted to prevent policemen or firemen from joining unions. A long precedent of state cases

starting around 1920, have enforced these prohibitions. This case, like the other cases, has had a negative effect upon unionization of firemen and policemen.

In Mugford v. Mayor and City Council of Baltimore,[8] the plaintiff, Mugford, a private citizen, entered a suit in Circuit Court Number 2 of Baltimore City alleging that the Mayor and the City Council had entered into an illegal agreement with the Municipal Chauffeurs, Helpers and Garage Employees Local Union No. 825, a subordinate Local Union of the International Brotherhood of Teamsters, Chauffeurs, Warehouse Workers and Helpers of America, American Federation of Labor. The plaintiff charged that the Department of Sewers cannot enter into any contract to certify a union as a collective bargaining agent. The Chancellor ruled that the City could not enter into a contract with a labor union over hours, wages and conditions of work when this is forbidden in the charter. Such matters are to be determined through a budgetary system. The Circuit Court of Appeals for Maryland upheld the decision of the Chancellor, but modified it to the extent that the City may deduct union dues from the pay of a city employee at the request of the employee without recognition of the union on the part of the City.

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[8] 185 Md. 266, 44 Atl. (2d) 745 (1945).

In the matter of recognition of a union for municipal or state employees (in absence of statutes allowing collective bargaining), the State is supreme and the general welfare will be considered before the rights of employees to join unions. In this case, a new agreement was entered into between the City and the Union which complied with the City Charter and allowed the City to negotiate contracts with the Union. This case had a negative effect upon union growth because it left to the State rather than to the employees, the decision of when employees may join unions.

B. Strikes, Boycotts and Picketing

Two important cases were heard during this period concerning strikes undertaken by unions. In Beth-El Hospital et al v. Robbins,[9] the plaintiff, a non-profit institution in the Borough of Brooklyn, sought an injunction to enjoin the defendant, Estelle Robbins, president of the Hospital Employees' Union of New York Local 444 of the State, County and Municipal Workers of America, Congress of Industrial Organization, from striking the hospital. The defendant had demanded that the plaintiff recognize the Union as the collective bargaining agent for certain of its non-professional employees. The Union had engaged

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[9] 60 N.Y.S. (2d) 798 (1946).

in certain activities which consisted of work-stoppages and picketing the hospital advertising that the Union was seeking to organize the hospital. The plaintiff charged that the shut-downs were strikes and in violation of the Labor Law Statute of New York. This law exempted employees of state and other political subdivisions and employees of charitable institutions from the provisions of Section 20, granting employees the right to join unions.

The trial court entered an injunction in favor of the plaintiff, forbidding the defendant from picketing and striking the hospital. The Union appealed to the New York State Supreme Court.

On January 18, 1946, the Court upheld the provisions of Section 20, exempting the plaintiff's employees from the provision of the New York Labor Law which allows employees to join unions. The Court concluded that there were certain institutions which, because of the nature of their services, cannot be struck. Hospitals are for the service of the sick and any interruption of their services would not be in the public interest.

As has been illustrated in the cases concerning the rights of firemen and policemen to join unions, the courts have greatly restricted the rights of employees to join unions when public welfare is at stake and impeded the growth of unions by so doing.

A primary boycott case arose in Dinoffa v. The International Brotherhood of Teamsters and Chauffeurs Local 179, et al.[10] The plaintiff, Dinoffa, and his wife operated two gas stations in the City of Joliet, Illinois. They did not employ any other help. The defendant, through its local president, informed the plaintiff's wife that she and her husband must join the Union. The plaintiff declined. The defendants then informed their members not to deliver any gas or raw petroleum to the plaintiff's service stations. This action did not allow the plaintiff to operate his business. The trial court dismissed the plaintiff's case for lack of proof of the defendant's actions. The plaintiff appealed to the Illinois Circuit Court of Appeals. The Court found that the evidence did indicate that the Union had engaged in an unlawful activity and issued an injunction restricting this action. The Union appealed the decision to the State Supreme Court.

The Court, in its decision on January 22, 1948, held that the Union had not at any time picketed the station. The Union could not prove that it and the plaintiff had any common economic interest. Purpose of the boycott was malevolent and enjoinable.

This was a negative decision which prevented the Union from

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[10] 339 Ill. 304, 77 N.E. (2d) 661 (1948).

exercising direct boycott of a small business where it had no direct economic interest.

A secondary boycott case was decided in Ramaser d/b/a Upholstery Supply Company v. Van Storage Furniture Drivers, Packers and Helpers Local 381.[11] In this California case, the Union sought to organize the business operated by Ramaser. Failing in its attempt, the Union informed the customers of Ramaser that if they received any shipments from Ramaser, they would be picketed. The plaintiff entered suit in a local court and contended that the action of the Union was making it impossible for him to carry on his business. This action, the plaintiff said, was in violation of Sections 1131 and 1136 of the Labor Code of California covering "hot cargo and secondary boycotts."

The trial court found that the evidence indicated that the defendants had engaged in activities to prevent the handling of the products and goods of the plaintiff. This activity was in violation of the State Labor Code because it coerced the customers of Ramaser to cease from using his goods or handling his products. The Union appealed the decision to theCalifornia State Supreme Court and claimed the statute was unconstitutional.

The Court held that the "hot cargo and secondary boycott"

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[11] 63, 137, CCH Labor Cases (1946).

provision of the State Labor Code was constitutional and within the police powers of the state to regulate these activities. The Union was given ten days to conform with the trial court's decision.

This decision upheld the right of the State of California to restrict the use of a secondary boycott by unions to coerce an employer to allow them to organize his company or business. Therefore, this decision had a negative effect upon union organization in the State of California. Another boycott case arose in New York in the matter of Singer v. Kirsch Beverages, Incorporated.[12] Plaintiffs were independent peddlers of seltzer and other beverages, who owned trucks and hired no employees. They brought this action against a union of soft drink workers and the manufacturers who supplied them. The plaintiffs alleged that the Union had conspired to refuse to load their trucks or to work for any manufacturer furnishing them with beverages; also that the manufacturers refused to supply them. The defendants contended that the Union contract prevented them from supplying merchandise to persons with whom the Union had disputed. If they supplied the merchandise, their employees would not work for them. The trial court held that no labor dispute existed within the New York Civil

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[12] 271 App. Div. 801, 65 N.Y.S. (2d) 400 (1946).

Practice Act, Section 876 and issued a temporary injunction requiring the Union to load the plaintiff's trucks. The company appealed the decision.

The Supreme Court of New York held that the Anti-injunction Act did not apply because the plaintiffs were the proper subjects for unionization. In this case, there had been no picketing, no violence nor threat of any kind. The Court concluded that the members of a union cannot be compelled to load the trucks of non-union peddlers or continue employment with an employer who persists in dealing with such non-union peddlers.

In this case, the decision had a positive effect upon union growth in the State of New York, since it allowed a union to refuse to deal directly with a non-union business or work for a person dealing with a non-union member.

Perhaps the largest number of decisions rendered by state courts during this period were concerned with the problem of picketing.

In Carnegie-Illinois Steel Corporation v. United Steelworkers of America,[13] the Company charged that the Union had prevented the Company officials and employees from entering the premises of the plant. The plaintiff alleged that as many as two hundred pickets were massed at each gate and bodily prevented

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[13] 353 Pa. 420, 45 Atl. (2d) 857 (1946).

supervisors from entering the plant. During the suit in the Pennsylvania trial court, the plaintiff produced affidavits and witnesses to show that the pickets grabbed supervisors and maintenance personnel and forcibly detained them. Others were threatened with bloodshed if management did not cease trying to enter the plant. The defendants claimed that the Pennsylvania Anti-injunction Act of 1939 prevented the issuance of the injunction. The trial court found in favor of the plaintiffs and held that the appearance of more than one hundred pickets at a gate concluded that picketing was not peaceful. The Union appealed to the Pennsylvania Supreme Court.

The Supreme Court handed down its decision on February 13, 1946, and ruled that the picketing was in violation of the Anti-injunction Act because it constituted the unlawful seizure of the Company's property. The gathering of two hundred pickets was, in the Court's opinion, neither lawful picketing nor assembly for peaceful purposes. In view of the evidence and the threat of violence, the police power of the State should be exercised to prevent its occurrence. Pickets were reduced to twenty at each gate. Furthermore, no picket was to interfere with any person seeking to enter the plant.

In another Pennsylvania case, that of Westinghouse Electric Corporation v. United Electric, Radio and Machine Workers of

America, Congress of Industrial Organization, Local No. 410,[14] the facts were similar to those in the Carnegie case. The Union prevented the Company personnel from entering the plant with the exception of those individuals whose names appeared on their list. The Pennsylvania trial court found that this list was an attempt to prevent the Company from free access to its plant as provided in the 1939 Act. The Union appealed the constitutionality of the decision.

The Pennsylvania Supreme Court on March 12, 1946, reviewed its decision in Carnegie, and noted that while there was no threat to do bodily harm by the pickets, but they did prevent the Company from entering its plant except those persons permitted by the Union. Such action was contrary to the 1939 Act and enjoinable.

While this case was being decided, the Westinghouse Corporation was also being struck and picketed in New Jersey. This strike was concerned with the same issues as those in Pennsylvania. The Company in Westinghouse Electric Corporation v. United Electrical, Radio and Machine Workers of America, Local 410,[15] charged that the Union prevented access to the plant by placing pickets two feet apart and then closing the picket line

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[14] 353 Pa. 446, 46 Atl. (2d) 16, (1946).

[15] 139 N.J. Eq. 97, 49 Atl. (2d) 896 (1946).

when someone tried to enter the plant. The Union held that the Norris-LaGuardia Act prevented the issuance of an injunction. The New Jersey trial court agreed with the Union that the Norris-LaGuardia Act forbade the issuance of an injunction. The Company appealed.

The New Jersey Supreme Court ruled that the picketing was done not as a means to communicate the existence of a strike but rather as a highly coercive measure. This picketing was tantamount to erection of a human fence to prevent plaintiffs from free access to the plant. The Court rejected the contention that since no violence occurred, the state lacked police power to enjoin the action of the pickets. It said that the pickets were not a legitimate picket line. The number of pickets were reduced to twenty and were ordered not to interfere with the Company's access to the plant.

The final picketing case was that of United States Electric Motors Incorporated v. United Electrical, Radio and Machine Workers of America Local No. 1421, et al.[16] The defendant struck the plaintiff, a California concern, on January 5, 1946, over an issue of wages. Plaintiff sought an injunction, charging that the mass picketing prevented its access to the plant. This was accomplished through threats and coercive actions on the part of

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[16]166 P 2d 921 (1946).

the Union. The Union contended that the "clean hands" doctrine and the Norris-LaGuardia Act prevented the issuance of the injunction in this labor dispute.

The Superior Court in and for the County of Los Angeles granted the injunction in favor of the plaintiff. The Court rejected the defendant's contention that the Company had refused to bargain and thus the "clean hands" doctrine applied. The evidence presented indicated that the Company had bargained in good faith. The pickets were limited to ten at each gate and forbidden to interfere with the free access to the Company's properties.

These four cases had a direct effect upon union growth. Three different state courts concluded that the Union can not prevent the company employees from entering into its plant. The restriction of the pickets and the allowance of the company of free access to the plant greatly reduced the effectiveness of the union to coerce the company to settle the strike.

The plaintiffs in Peters et al. v. Central Labor Council et al.[17] operated an open shop and its employees were satisfied with the terms and conditions of their employment. Defendant contacted the plaintiff for the express purpose of organizing

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[17] 169 P 2d 870 (1946).

the Company and obtaining a "closed shop" agreement. Plaintiff agreed to sign the contract if the majority of employees agreed. However, under no conditions would the Company agree to a "closed shop" agreement. The defendants placed the Company on an "unfair list" and picketed trucks which attempted to make deliveries. The plaintiff entered a suit in the Circuit Court of Multnomah County in Oregon for an injunction against the Union. The Court held that the Oregon Anti-injunction Act forbade the issuance of the injunction. Plaintiff appealed to the Oregon Supreme Court on writ of error.

The Court rendered its decision saying that since the main purpose of the picketing was to organize the plaintiff, then it could not be enjoined. The mere fact that a "closed shop" was a secondary rather than primary objective, it could not be considered to render the Union's actions as illegally objective.

This decision had a helpful effect upon union organization since it enforced the right of a union to picket when organization was the principal objective. The limit of its effect is restricted, however, to the State of Oregon.

Another "closed shop" argument arose in Park and Tilford Import Corporation v. International Brotherhood of Teamsters, etc.

Local 848.[18]

The issue in this litigation arose when defendant sought to organize plaintiff's California salesmen and office clerks. Plaintiff consented to the interview by the local. The salesmen and office workers refused to join the local but formed the Park and Tilford Mutual Association. Defendant then presented the plaintiff with a "closed shop" agreement, which he refused to sign. The local then picketed the premises and placed the Company on the "Unfair List."

Plaintiff took the matter to the National Labor Relations Board, seeking to have the Mutual Association certified as the collective bargaining agent of the Company. The Board held that the Company had engaged in an unfair labor practice--namely, that it dominated the Mutual Association. The plaintiff then took the matter to the California Superior Court and sought an injunction under the state Labor Law Statute.

In its petition, the Company contended that it was suffering irreparable damage and that the Union sought to make the Company violate the National Labor Relations Act by signing a "closed shop" agreement. The Union held that the Norris-LaGuardia Act applied and the injunction issuance would be

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[18] 165 P 2d 891 (1946).

unconstitutional.

The trial court issued an injunction which forbade the local from placing the Company on an "unfair list" and picketing the premises because irreparable damage would result unless this activity ceased. The Union appealed the decision to the Supreme Court of California.

The Court, in its opinion, recognized that the "closed shop" is a proper objective of concerted labor activities, even when undertaken by a union that represents none of the employees of the employer against whom the activities are directed. The Court found that the National Labor Relations Act allows the Union to engage in such activity when it represents a minority of the employees. The hardship caused by such action depends largely upon public sentiment and support of the public. To forbid otherwise would be to interfere with the free speech rights of the defendants. The Court modified the trial court's injunction to enjoin the defendants from making demands for a "closed shop" so long as they do not represent the required majority of plaintiff's employees.

This decision had little direct effect upon union growth since the enactment of the Taft-Hartley Act forbade the inclusion of "closed shop" agreement in union contracts.

C. Collective Bargaining

Three cases were selected as influencing union growth during this period. In Belding Heminway Company v. Wholesale and Warehouse Workers' Union, Local No. 65,[19] the Company, located in New York, had entered into agreement with the local to negotiate all grievances and if unable to adjust the question, it would be submitted within twenty-four hours to an arbitrator. During the term of the agreement, the Company established a new warehouse and employed non-union men. The defendant contended that the Company had to employ union members at its new warehouse, but the Company refused. Simultaneously, it curtailed its operations at the warehouse where the local's members were employed. The local then pressed for arbitration of the issue. The Company entered a suit in the trial court for an order staying the arbitration. The Court denied the Company's motion. The Company appealed.

In its decision, the Court of Appeals held that the question as to whether the appellant were bound to employ at its New Jersey plant members of the respondent union, was a debatable question calling for a decision as to the scope of the collective bargaining agreement between the parties. The question was for the Court, not for the arbitrators.

Another arbitration question arose in California in Screen

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[19] 295 N. Y. 541, 68 N.E. (2d) 681 (1946).

Cartoonist Guild, Local 852 v. Disney.[20] The arbitration in compliance with a clause in the contract had rendered a decision in a dispute over paid holidays. The defendant refused to abide by the decision and the plaintiff entered suit in a California Superior Court for confirmation of the award pursuant to section 1287 of the Code of Civil Procedure. The trial court refused to confirm the order and contended that the arbitrator had exceeded his powers and that the contract had specified the hours of work and rates of pay for holidays. The Union appealed.

The District Court of Appeals of California agreed with the trial court that the contract defined the work week and rate of pay and the arbitrator exceeded his authority.

The final case was also an arbitration matter and was decided in International Association of Machinists v. Cutler-Hammer, Incorporated.[21] The question arose over the payment of a bonus to members of the New York Local for the first six months of the year 1946. The collective agreement contained a provision that disputes as to the "meaning, performance, non-performance or application" of the provisions of the contract. The mere assertion by a party of the meaning of a provision which is clearly

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[20] 168 P 2d 414 (1946).

[21] 67 N.Y.S. 2d 317, 271 Appl. Div. 917 (1947).

contrary to the plain meaning of the words, cannot be made an arbitrable issue. The Union took the position that the contract called for a payment of the bonus. The Company refused and the Union held that the matter should be submitted to an arbitrator. The Company refused and the Union entered suit for enforcement of the contract provisions. The trial court ruled in favor of the Union and compelled the Company to arbitrate. The Company appealed.

In its decision, the Supreme Court of New York, Appellate Division, reversed the trial court's order and contended that the evidence indicated that the contract merely called for the discussion of a bonus and not a decision on the bonus amount to be paid.

These three cases had an effect upon union growth since they weakened the position of the Union.

D. Disputes Between Individuals and Unions

This area is particularly important because it was in such decisions that the Courts sought to protect the rights of individual members and imposed certain duties and obligations on unions.

In Leo v. Local Union No. 612, International Union of

Operating Engineers,[22] plaintiff sued for damages on behalf of Howard A. Leo, Fred E. Brown and J. B. Burns against defendants Local No. 612, IUOE for wages lost owing to their allegedly wrongful expulsion from the Union and consequent loss of employment. Plaintiffs were expelled because they had allegedly solicited membership in a rival union. The Union contended that the expulsions were proper under Section e, subdivision 7, article 23 of the International Constitution. "Any officer or member . . . who commits an offense . . . or creates dissension among members . . . can be fined, suspended or expelled . . . ." The plaintiffs, according to the defendants, had solicited membership for the Brotherhood of Trainmen from among the members of Local No. 612.

The trial court found in favor of the plaintiffs. In its opinion, the Court noted that the constitution nowhere said that the solicitation of members for a rival union is cause for expulsion, fine or disciplinary measures. Furthermore, the evidence offered by the plaintiffs indicates that the defendants did not comply with the Constitution in notifying the plaintiffs of the charges against them and in allowing them to appeal to the general meeting of the local. The decision was in favor of the

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[22] 26Wash(2d) 498, 174 p 2d 523 (1946).

plaintiffs and damages awarded. The defendants appealed to the Washington Supreme Court.

In a split decision, the Court ruled that disciplinary action is voided if not in accordance with the Union rules and the exhaustion of Union's Constitutional provisions are not allowed. The trial court was correct in contending that the Constitution did not provide expulsion, fine or other disciplinary remedies for soliciting membership in a rival union. The Court then cited previous decisions granting it the right to interfere with the internal relations of unions.

The action of the Court was an action in contrast and implied that the Union had an inferential promise to maintain the member's standing so long as he respects the Union rules. The Union breached the contract since it did not comply with its own rules. In his article on "Legal Limitations on Union Discipline," Summers agreed with other leading legal authorities that a complaint for wrongful expulsion was a tort action and permitted unions to be sued for misconduct.[23] This decision impeded union growth in the State of Washington.

One of the most celebrated cases was DeMille v. American Federation of Radio Artists.[24] Cecil B. DeMille was a member of

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[23]Smith, p. 920.

[24]Cal. 2d 139, 175 A.L.R. 382 (1947).

the American Federation of Radio Artists, and refused to pay an assessment of one dollar levied by the Union to finance its campaign against Proposition No. 12, an initiative measure on the state ballot outlawing the "closed shop." As a result of his failure to pay the assessment, he was suspended from the Union. Since the AFRA had "closed shop" agreements with the radio networks, DeMille lost his job. He then entered suit in a California Superior Court to compel the revocation of his suspension. The lower court dismissed his complaint and he appealed to the Supreme Court of California.

In his appeal, the plaintiff charged that the Federation had no authority under organic law and regulations to levy the assessment for the purposes stated. Also, the defendant's action in suspending him violated his constitutional rights under the First Amendment of the United States Constitution. The Union contended that the assessment was approved by the National Board of the Federation in compliance with the Constitution and by-laws of the National Federation.

In its affirmation of the lower court's dismissal of the complaint, the Supreme Court agreed that the assessment was levied in compliance with the Constitution and by-laws of the National and was therefore proper. The major question in the Court's opinion was "could a person be required to financially support an

assessment which was an expression contrary to his personal beliefs?" The Union, in the Court's opinion, represented the common or group interest of its members, as distinguished from their personal or private interests. A member must submit to the will of the majority in this matter as far as the assessment is concerned. However, he is free as an individual to take whatever action his conscience and political convictions dictate.

This was an important case and influenced union growth in California. The Court distinguished between what a member of an organization must do and what his rights as a private citizen are. Nevertheless, it affirmed the Union's right to protect its common good.

This decision in the Michigan case had no effect upon union growth.

E. Disputes Between Local and International Unions

This area is important because the growth of unions may be affected by court decisions regarding the relationship between local unions and the international union. There were four important decisions rendered during this period.

In Minnesota Council of State Employees No. 19 et al. v. American Federation of State, County and Municipal Employees

et al,[25] the plaintiff claimed defendants revoked the charter of the council and organized a new local. This action, the plaintiff contended, is in violation of the Union's constitution. The constitution required that the local be notified of the charges filed against it and that a two-thirds vote of the General Executive Board was required for suspension of a local. Defendant relied upon a state statute which forbids the issuance of an injunction in a labor dispute. The trial court dismissed the plaintiff's suit for lack of evidence. The local appealed to the Supreme Court of Minnesota.

In a decision rendered on June 8, 1945, the Court held that trial court had erred in its decision. While no labor dispute was involved, the Court claimed jurisdiction because previous decisions had allowed a court to interfere where the rights of unions or their members were denied equal remedies provided under the union's constitution. Case was returned to the trial court for determination of evidence of International's failure to provide remedies available under the constitution.

This case had no effect upon union growth in Minnesota since no question was raised concerning the right of the International to suspend the local; rather, the question was concerned

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[25] 19 N.W. (2d) 414 (1945).

with a matter of evidence--had the International complied with its constitution?

A question of combination of two locals into two others was raised in Cameron et al. v. Durkin et al.[26] The plaintiffs were Alfred J. Cameron and others, members of Local 289 and Local 448 of the United States Association of Journeymen, Plumbers and Steamfitters of the United States located in the City of Boston, Massachusetts. The defendant was Martin P. Durkin and others, members of Local 12 and 537 of the same union. The president and the general executive board of the Association had decided to consolidate Locals 289 and 448 with 12 and 537. Plaintiffs opposed this action and contended it was contrary to the Constitution and by-laws of the Association.

The suit in Superior Court of Suffolk County contended that the defendants could not assume the jurisdiction over the plaintiffs' local because of the unconstitutionality of the Association's action. The trial court held that the president and the general executive board had the right to consolidate a local with another and that this action was to be obeyed by the local. In this instance, the officer had acted contrary to the constitution of 1924, which said that a local shall be consolidated into two locals. In this case the two locals were being divided into two

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[26] 74 N.E. 2d 671 (1947).

different locals. The Massachusetts Court refused to grant a writ of error to the defendant on its appeal.

This decision, in some way, was favorable to the growth of local unions in the State of Massachusetts, since local unions and their members were protected against the unlawful actions of the International Union.

In Schrank et al v. Brown et al,[27] the plaintiffs were the president and members of the Manhattan and Bronx Local No. 402, International Association of Machinists, who sued the defendant, Harvey G. Brown, as president of the Grand Lodge of the International Association of Machinists. In its suit, the local alleged that the International informed it by letter that in compliance with Article IV, Section 5 of the Constitution of the International, Brown was suspended and the lodge would be taken over and operated by a deputy of the Grand Lodge. The plaintiff contended that this action was unconstitutional, since no charges of misconduct were filed with the letter to the plaintiff. The defendant relied upon the Court's lack of jurisdiction in the internal affairs of unions. The trial court found in favor of the local and the International appealed to the New York Supreme Court.

The Supreme Court granted jurisdiction since the International action had been contrary to the constitution of the union.

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[27] 80 N.Y. S (2d) 452 (1948).

The Court granted a local the right to sue in a court of equity when an international engages in actions which constitute an unwarranted exercise of power.

This decision had a slight influence upon union growth in New York since it gave local unions the right to seek court injunctions when an international engaged in actions which were illegal or beyond the scope of its authority.

The final case concerns discrimination on the part of the International. In Betts et al. v. Easley et al,[28] defendant, a Kansas union, was certified under the Railway Labor Act as the collective bargaining agent for a unit of railroad shop employees. Plaintiffs were Negro members of the unit, who under the constitution of the Union, were ineligible to equal membership status with white members. Plaintiff charged that they were placed in separate "Jim Crow" lodges subject to the jurisdiction of a delegate of the nearest white lodge. They were not allowed to attend any meetings of the white lodge or to vote on election of any of the officers of the lodge. They also had no voice in any of the bargaining sessions or agreements enacted by the lodge.

In their suit in the District Court of Wyandotte County, the plaintiffs charged that the action of the white lodge was in violation of the rights of the plaintiffs as protected under the

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[28] 169 p (2d) 831, (1946).

First, Thirteenth and Fourteenth Amendments to the Constitution of the United States. The trial court refused to issue an injunction citing that membership in the Brotherhood was voluntary and not compulsory. The plaintiff appealed to the Kansas Supreme Court.

The Supreme Court reversed the lower court and concluded that the Federal Constitution gave to the plaintiffs certain rights which were being denied by the action of the white lodge. The Court contended that present day realities in the modern industrial society do not allow a person to find employment unless he belongs to a labor organization. In the Railway Labor Act, Congress recognized that a person has the right to engage in collective bargaining by labor representatives of their choosing. Therefore a union performing under this act as a bargaining agent cannot deny equality of privilege to individuals or minority groups merely because membership in the organization is voluntary.

The decision had a small effect upon union growth in Kansas since it allowed individuals to have a voice in the operation of their local.

CHAPTER V

CONCLUSION

The purpose of this thesis, as stated in the first chapter, was to examine selected court decisions to see if they affected union growth. The period selected (1945-1948) was one preceding change in union growth and was in keeping with the main theme of the Institute's project on Union Growth. Fifty-two cases were selected as representative of those heard and decided during this period. Of these cases, fifteen were United States Supreme Court, eight Circuit Court of Appeals and five Federal District Court. The remaining twenty-one were decided by the various state courts.

In evaluating these selected decisions, distinction between Federal and State Courts will be made.

Before we attempt a detailed evaluation, a general observation should be made. In selecting the criteria by which to judge the effects of a particular case upon union growth, two questions must be asked. Is this a leading case? What were its immediate and long range effects upon union growth? Most of the cases examined were cited in the various labor law monographs. The empirical measure of the immediate or long range effects was a more difficult task. The amount of data on which to base an objective study was slim.

We cannot conclude that a particular case increased or reduced membership by an indicated figure. However, we can determine by reasoning that the decision had either good or adverse influence.

Under the general topic of organization, eight decisions rendered by the United States Supreme Court resulted in positive effects upon union growth. It resolved the conflicting National Labor Relations Board's decisions about the rights of foremen to join unions. The Packard decision allowed the foremen this right. However, as indicated in Chapter III, less than 1 per cent of those foremen who were eligible to join a union availed themselves of the opportunity to do so. The enactment of the Taft-Hartley Act modified the decision by allowing the foremen to form unions, but exempting the employer from having to bargain collectively with them.

Secondly, the Court in its enforcement of the right of the National Labor Relations Board to determine who is not an "employee" under the National Labor Relations Act contributed to those unions attempting to organize plant guards, clerical and other non-managerial personnel. The Circuit Court, acting in accordance with the previous rulings, continued to uphold the Board's right to determine the definition of "employee" and who may or may not be included in a bargaining unit. These decisions enhance the unions' attempts to organize these groups.

The final major organizational case, that of Hill v. Florida, merely continued a long series of Federal decisions to uphold the supremacy of the Federal over the State Government in labor relations.

The major picketing case decided by the Supreme Court had no effect upon union growth, since it was concerned with the "due process" clause of the Constitution. The District Court followed the Supreme Court decisions on picketing, as outlined in the Thornhill and Ritter cases. It upheld the right of the union to picket, but allowed the Court or Board to specify certain conditions regulating it.

In the area of secondary boycotts, the District Court upheld the provisions of the Taft-Hartley Act which regulated the use of this coercive activity by unions. These decisions had a negative effect upon union growth as they impeded the union from exerting effective pressures on employers to capitulate.

The Supreme Court ruled on two major Collective Bargaining matters. In its Mt. Clemens decision, it laid the foundation for the enactment of the "Portal to Portal Act" and in the Inland matter, it broadened the concept of wages to include pensions. The Inland decision had a favorable effect upon union growth, since it allowed unions to achieve more benefits for their members.

Two decisions of the Supreme Court which captured the most publicity were those in the United Mine Workers and Allen Bradley

cases. The United Mine Workers' attempts to strike while under governmental control created adverse publicity, causing detriment to the union's cause and brought about the passage of legislation to prevent their reoccurrence.

In Allen Bradley, the Court did not condemn the right of the union to choose what it would install, but merely its allies in the cause. Its overall effect upon union growth was negligible.

In the question of the rights of an individual and unions, the Court continued the practice of removing racial barriers in union membership. In the Elgin and Hughes decisions, the Court followed two different lines of reasoning. In Hughes, it granted the union the right to be notified of all grievances, but declined to cite the employer for an unfair labor practice unless he refused to advise the union. In Elgin, it held that the Railway Labor Act was different and that a union could not settle the grievances of an employee without his assent to the settlement. This conflict remained until Section 9 of the National Labor Relations Act was amended in 1947.

The overall effects of the Federal Court decisions upon union growth did not reverse any decisions which had become precedent since the enactment of the Wagner Act. "Employee" status was granted to certain groups previously considered part of management and also the broadening of the scope of issues to be bargained for under the National Act. With the enactment of the Taft-Hartley

Act, the Court began to render decisions which enforced the legislative prohibition of union activity. It can be concluded that in the first two years of this period, the Courts' decisions were favorable to union growth and in the last two years a few decisions retarded union growth somewhat.

The twenty-six cases decided by the State Court represented a cross section of State judiciary opinions. In the area of union organization, Nebraska, Arizona and North Carolina Courts rendered decisions upholding the validity and constitutionality of "right to work" statutes. The Supreme Court, in 1949, reinforced these decisions and upheld their constitutionality. In those states which enacted so-called "right to work" laws, these decisions had a negative effect upon union growth.

The State of New York upheld the right of charitable institutions to be exempt from labor organization and this retarded unionization of their employees.

The few cases on the rights of certain city employees to join unions reinforced the general prohibition of their rights to organize.

In the area of mass picketing, the state Supreme Courts of New Jersey, Pennsylvania, and California rendered similar decisions restricting unions' attempts to use pickets for barring entrance to employers' plants. These decisions sanctioned the use

of police power to prevent violence. Their overall effects upon union growth were negative since they followed a Supreme Court practice of forbidding picketing in cases of violence.

Three boycott cases were decided by the Supreme Court of California. The crux of these cases was the enforcement of a California "anti-boycott" act. The decisions were unfavorable towards unions and followed the trend of the Federal Courts in prohibiting this activity as provided in the Taft-Hartley Act. Their immediate effect upon union growth in California was negative since they greatly restricted the coercive activity of unions.

The only Illinois decisions forbade a direct boycott of a non-union single-employee. Its immediate effect upon union growth is questionable, since the Court in no way restricted the union from picketing the employer's premises.

In the area of collective bargaining, the selected cases were merely concerned with the scope of an arbitrator's power under a collective agreement and had no real effect upon union growth. The Courts were reluctant to interfere in the relationships of unions with their locals or individual members, unless a question of rights were involved. They felt empowered to restrict any action by a local or international which might deny rights and privileges afforded under the Union's constitution or by-laws. Their effects upon union growth were questionable since the Courts

merely acted as protectors of rights.

An appraisal of the State Court decisions indicated concern with protecting individual rights and property from violent or unlawful union actions. In those states having "right to work" laws, the Court upheld their constitutionality which adversely affected union growth.

The comparative study of Federal and State Courts' decisions reveals that for the most part they had favorable effects upon union organization. It is apparent that they did not reverse any major precedents, but merely clarified or modified some. The Courts affirmed legislation enacted under the Taft-Hartley Act, which imposed certain restraint on union activity, where, as a matter of public policy in certain states, union security provisions were restricted or forbidden. Their Courts upheld their validity. Thus, after an evaluation of the decisions' impact upon union growth, the author is of the opinion that, in general, the Courts had a favorable influence.

It should be pointed out that during this period of study, the Federal Courts showed a more favorable attitude toward unions than did the State Courts.

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ABSTRACT

This thesis is a study of the effects of court decisions on union growth in a selected period of time. The period selected was that preceding a change in the development of unions. The research is based on an examination of court decisions during the years of 1945 to 1946 inclusive. Not all of the court decisions affecting labor were examined, but they were grouped under general topic headings: i.e., organizations, strikes, boycotts, picketing, collective bargaining and the relationships between the individual and the union, and between the union and the international.

A brief examination of those other factors of union groups, such as government, legislative, public opinion, union leadership was discussed since they contributed to the increase or decrease in union growth during this period.

The examination of the selected court decisions indicated that the Federal Courts showed a more favorable attitude towards union growth than did the State Courts.

The thesis forms a part of a general study on union growth currently being undertaken by the Institute of Industrial Relations.

APPROVAL SHEET

The thesis submitted by Aloysius Joseph Memmel has been read and approved by three members of the faculty of the Institute of Social and Industrial Relations.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the Degree of Master of Social and Industrial Relations.

Date

Signature of Advisor